



June 10, 2015

Steve Wright
Columbia Falls Aluminum Co. LLC
2000 Aluminum Dr.
Columbia Falls, MT 59912

Subject: Administrative Order on Consent, Docket No. HW-15-01 [EPA ID No. MTD057561763; FID 2386]

Dear Mr. Wright:

The Department of Environmental Quality (DEQ) has received your signed Consent Order. Enclosed for your records is a fully executed copy of the Consent Order to address anticipated violations of the Montana Hazardous Waste Act (MHWA) at your facility by exceeding the hazardous waste accumulation and storage limits without a hazardous waste management permit. The effective date of the Consent Order is June 10, 2015.

According to the terms of the Consent Order, you are required to submit a plan and schedule for the proper removal of the K088 hazardous wastes and other regulated wastes from the pot room building within 60 days of the effective date of this Consent Order. Please refer to Section II of the Consent Order for a detailed description of the required actions.

If you have any questions, please contact me at the phone number or email address listed below.

Sincerely,

A handwritten signature in black ink that reads "Mike Rieger". The signature is stylized with a large, looped "M" and a cursive "Rieger".

Michael K. Rieger
Environmental Enforcement Specialist
DEQ Enforcement Division
P.O. Box 200901
Helena, MT 59620-0901
Email: mrieger@mt.gov

Enclosure

cc w/enc via email: Carol Schmidt, DEQ Legal
Mark Hall, DEQ HW
Cathy Laughner, Browning, Kaleczyc, Berry & Hoven
Julie DalSoglio, EPA-Montana
Flathead County Sanitarian
Jim Perris, Calbag Resources LLC

1 BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
2 OF THE STATE OF MONTANA

3 IN THE MATTER OF:
4 IMPLEMENTATION OF THE HAZARDOUS WASTE
5 ACT BY COLUMBIA FALLS ALUMINUM
6 COMPANY LLC AND CALBAG RESOURCES LLC
7 AT THE COLUMBIA FALLS REDUCTION
8 FACILITY, FLATHEAD COUNTY, MONTANA. (EPA
9 ID NO. MTD057561763; FID 2386)

ADMINISTRATIVE ORDER
ON CONSENT

Docket No. HW-15-01

7 Pursuant to the authority of Section 75-10-413, Montana Code Annotated (MCA), the
8 Department of Environmental Quality (Department) hereby gives notice to the Columbia Falls
9 Aluminum Company LLC (CFAC) and Calbag Resources LLC (Calbag) of the following
10 Statement of Facts with respect to the implementation of and compliance with the Montana
11 Hazardous Waste Act (MHWa) (Title 75, chapter 10, part 4, MCA) and the Administrative
12 Rules of Montana (ARM) (Title 17, chapter 53, sub-chapters 1 through 15) adopted thereunder.

13 I. STATEMENT OF FACTS

14 The Department hereby makes the following Statement of Facts:

- 15 1. The Department is an agency of the executive branch of government of the State
16 of Montana, created and existing under the authority of Section 2-15-3501, MCA.
- 17 2. The Department administers the MHWa.
- 18 3. CFAC and Calbag are "Persons." *See* Section 75-10-403(12), MCA.
- 19 4. CFAC is a "Generator." *See* Section 75-10-403(7), MCA.
- 20 5. CFAC owns and operated a primary aluminum reduction plant, located at 2000
21 Aluminum Drive, Columbia Falls, Montana. The plant is a "Facility." *See* Section 75-10-
22 403(5), MCA.
- 23 6. The aluminum reduction process requires a reduction cell or "Pot" that is lined
24 with a carbon cathode (pot liner). The Facility contains 451 Pots, located in the Pot Room

1 Building of the Facility; 450 of the Pots are in pot holes and one Pot is located in a pot rebuild
2 area within the Pot Room Building.

3 7. Pursuant to the Asset Purchase and Demolition Agreement for Pot Room Building
4 Complex dated April 27, 2015, CFAC sold and Calbag purchased the 451 Pots. As the original
5 registered generator, CFAC retains responsibility for the "cradle-to-grave" management of
6 hazardous wastes generated at the Facility.

7 8. Upon completion of the reduction process, the pot liner is contaminated with
8 hazardous constituents. Therefore, spent pot liners (SPL) are a regulated hazardous waste.

9 9. The Environmental Protection Agency (EPA) defines SPL from primary
10 aluminum reduction as K088 listed hazardous waste. *See* 40 CFR, Part 261, Subpart D,
11 incorporated by reference in ARM 17.53.501.

12 10. On August 4, 1980, CFAC registered with EPA as a hazardous waste generator
13 and transporter for K088 hazardous wastes. EPA assigned CFAC EPA Registration ID No.
14 MTD057561763. CFAC currently maintains a hazardous waste generator status of Large
15 Quantity Generator pursuant to ARM 17.53.601.

16 11. A person may not construct or operate a hazardous waste management facility
17 without first obtaining a permit from the Department. *See* Section 75-10-406, MCA.

18 12. A hazardous waste management facility permit (Permit) is required to accumulate
19 and store hazardous waste on site for greater than 90 days. *See* ARM 17.53.601, incorporating
20 by reference 40 CFR 262.34(a).

21 13. Neither CFAC nor Calbag have applied for, nor has the Department issued to
22 CFAC or Calbag, a Permit to construct or operate a hazardous waste management facility.

23 14. On July 24, 2014, CFAC sent a letter to the Department requesting an
24 Administrative Order on Consent to address the removal of the K088 wastes from the Pot Room

1 Building. The letter stated CFAC would not be able to remove all the K088 wastes from the Pot
2 Room Building within the 90-day hazardous waste accumulation and storage time limitations.

3 15. On March 3, 2015, CFAC issued a press release/notice stating that it intends to
4 close the Facility permanently. The closure of the facility indicates the 451 Pots will not be used
5 for aluminum reduction in the future and the pot liners are considered "spent."

6 16. A person who violates any provision of this part is subject to a civil penalty, not
7 to exceed \$10,000 for each violation. *See* Section 75-10-417, MCA.

8 II. ADMINISTRATIVE ORDER ON CONSENT

9 The Department, CFAC and Calbag enter into this Administrative Order on Consent
10 (Consent Order) to address the fact that neither CFAC nor Calbag have a hazardous waste
11 management permit, as required by Section 75-10-406, MCA, to store K088 hazardous wastes on
12 site for more than 90 days, and to address the potential that CFAC and/or Calbag may violate the
13 hazardous waste accumulation and storage time limits in ARM 17.53.601, incorporating by
14 reference 40 CFR 262.34(a). This Consent Order is issued pursuant to the authority vested in the
15 State of Montana, acting by and through the Department under the MHLA and the rules adopted
16 under the MHLA. NOW, THEREFORE, THE DEPARTMENT ORDERS AND CFAC AND
17 CALBAG AGREE AS FOLLOWS:

18 17. CFAC and Calbag are not required to obtain a Permit for the storage of hazardous
19 waste from the Pot Room Building for more than 90 days provided CFAC and Calbag comply
20 with the provisions of this Consent Order.

21 18. Within 60 days of the effective date of this Consent Order, CFAC and Calbag
22 shall jointly submit a plan and schedule (Plan) for the proper removal of the K088 hazardous
23 wastes and other regulated hazardous wastes from the Pot Room Building and for the proper

24 //

1 transport and off-site disposal of the K088 hazardous wastes at a permitted hazardous waste
2 disposal facility. At a minimum, the Plan shall include the components listed in Paragraph 19.

3 19. The Plan shall include an inventory of all hazardous waste in the Pot Room
4 Building and a site safety and health plan. The Plan shall describe how the removal, processing,
5 storage and transport of K088 hazardous wastes shall comply with the substantive requirements
6 of a hazardous waste storage permit. See ARM 17.53.801; 40 CFR 264, Subpart H – Financial
7 Requirements; 40 CFR 264, Subpart I - Use and Management of Containers; and 40 CFR 264,
8 Subpart DD - Containment Buildings. The Plan shall also include a description of the procedures
9 for hazardous waste tracking, quarterly reporting procedures, dust management, equipment
10 decontamination, spill/release response plan, and shall address any other activities that may
11 result in a release of hazardous waste.

12 20. Beginning with the first day the aluminum heel of an individual Pot is removed,
13 CFAC and Calbag will have 90 days to process, store and transport the K088 hazardous waste
14 from that individual Pot off site to a permitted hazardous waste disposal facility.

15 21. Under the Plan, CFAC and Calbag shall assign the SPL from each Pot an
16 individual number or other unique identifier to track its removal, generation, transportation and
17 proper disposal. The tracking number shall be used on the Uniform Hazardous Waste Manifest.
18 CFAC and Calbag must also track the generation, storage, transport and disposal of any solid
19 wastes removed from the Pot Room Building.

20 22. All K088, and any other listed or characteristic hazardous waste, shall be removed
21 from the Pot Room Building within two years from the date the Department approves the Plan.

22 23. This Consent Order does not address the demolition and disposal of any building,
23 structure, or equipment associated with aluminum processing or reduction at the Facility.

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1 24. The Department will review the Plan and send CFAC and Calbag a review letter.
2 The letter will notify CFAC and Calbag of whether the Department approves the Plan. If
3 disapproved, the letter will direct CFAC and Calbag to modify the Plan in accordance with the
4 review comments and resubmit the Plan by the date set forth in the letter. If the Department does
5 not approve the resubmitted Plan, CFAC and Calbag agree to meet with the Department as soon
6 as is possible to discuss an approvable Plan.

7 25. CFAC and Calbag may not implement the Plan, including removing, processing,
8 storing or transporting any K088 hazardous wastes, until CFAC and Calbag receives written
9 approval of the Plan from the Department.

10 26. The Department-approved Plan and compliance dates shall be incorporated by
11 reference into this Consent Order as enforceable requirements upon written approval by the
12 Department.

13 27. K088 hazardous waste and other hazardous wastes removed from the Pot Room
14 Building are remediation wastes subject to a fee as set forth in ARM 17.53.113, which will not
15 exceed a maximum annually of \$25,000 fee for each calendar year. See Section 75-10-405,
16 MCA (2015).

17 28. The Plan required in Paragraph 18 shall be sent to:

18 Michael Rieger
19 DEQ Enforcement Division
20 P.O. Box 200901
 Helena, MT 59620-0901

21 29. All other documents required by this Consent Order shall be sent to:

22 Mark Hall, Manager
23 DEQ Hazardous Waste Program
24 P.O. Box 200901
 Helena, MT 59620-0901

1 *Stipulated penalties*

2 30. In the interest of settlement and to avoid litigation, CFAC and Calbag agree to be
3 jointly and severally liable to pay the following stipulated penalties:

4 a. A \$500 stipulated penalty for each day the Plan required in Paragraph 18
5 is submitted late;

6 b. A \$1,000 stipulated penalty for each day on-site storage of K088
7 hazardous waste exceeds the 90-day hazardous waste accumulation and storage time
8 limitation in Paragraph 20; and

9 c. A \$1,000 stipulated penalty for each day the removal of K088 hazardous
10 waste and other hazardous wastes in the Pot Room Building exceeds the two-year time
11 limit in Paragraph 22.

12 31. Within 30 days after receipt of written notice, CFAC and/or Calbag shall pay to
13 the Department the full amount of any stipulated penalty that is due. Stipulated penalties must be
14 paid by check or money order, made payable to the "Montana Department of Environmental
15 Quality," and shall be sent to:

16 John Arrigo, Administrator
17 DEQ Enforcement Division
18 P.O. Box 200901
Helena, MT 59620-0901

19 32. If the Department assesses stipulated penalties under this Consent Order and
20 notifies CFAC and Calbag of the reason for and amount of the stipulated penalty, and CFAC and
21 Calbag refuse to pay the amount assessed, the Department is entitled to a judgment in district
22 court for the stipulated penalty. In such an action, CFAC and Calbag may dispute the occurrence
23 of the violation before the court; however, if the court determines that a violation has occurred,
24 CFAC and Calbag are precluded from challenging the amount of the stipulated penalty.

33. If any event occurs that may cause a delay in submittal of the Plan or removal of K088 hazardous waste as set forth in this Consent Order, CFAC and/or Calbag shall notify the Department in writing within ten (10) days after it becomes aware of the delay. The notice must include: (a) an explanation of the reasons for the delay; (b) the expected duration of the delay; and (c) a description of all actions taken, or to be taken, to prevent or minimize the delay and a schedule for implementation of those actions. The notification shall be sent to the address in Paragraph 28.

34. The Department will review the notice submitted by CFAC and/or Calbag under Paragraph 33 and will exercise its enforcement discretion to determine if it is appropriate to waive all or a portion of any stipulated penalties.

35. The requirement to pay stipulated penalties remains in effect until this Consent Order is terminated in writing by the Department.

36. Failure to fulfill the requirements of this Consent Order by the specified timeframes, as ordered herein, constitutes a violation of Title 75, chapter 10, part 4, MCA, and may result in the Department seeking a court order requiring additional corrective action and assessing civil penalties.

III. CONSENT TO ADMINISTRATIVE ORDER

37. CFAC and Calbag waive their right to administrative appeal or judicial review of the Statement of Facts and Administrative Order on Consent set forth herein and agrees that this Consent Order is the final and binding resolution of the issues raised.

38. The terms of this Consent Order constitute the entire agreement between the Department and CFAC and Calbag with respect to the issues addressed herein notwithstanding any other oral or written agreements and understandings made and entered into between the Department and CFAC and Calbag prior to the effective date of this Consent Order.

39. Except as herein provided, no amendment, alteration, or addition to this Consent Order shall be binding unless reduced to writing and signed by all parties.

1 40. Each of the signatories to this Consent Order represents that he or she is
2 authorized to enter into this Consent Order and to bind the parties represented by him or her to
3 the terms of this Consent Order.

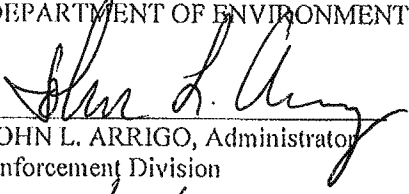
4 41. Except as provided in Paragraph 17 of this Consent Order, none of the
5 requirements in this Consent Order are intended to relieve either CFAC and Calbag from their
6 obligation to comply with all applicable state, federal, and local statutes, rules, ordinances,
7 orders, and permit conditions.

8 42. This Consent Order terminates upon determination by the Department and written
9 notification to CFAC and Calbag that they have fully complied with its requirements.

10 43. This Consent Order becomes effective upon signature of the Department.

11 IT IS SO ORDERED:

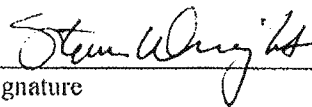
12 STATE OF MONTANA
13 DEPARTMENT OF ENVIRONMENTAL QUALITY

14 
15 JOHN L. ARRIGO, Administrator
16 Enforcement Division

17 6/10/15
18 Date

IT IS SO AGREED:

COLUMBIA FALLS ALUMINUM
COMPANY LLC

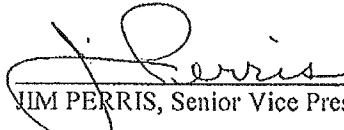
19 
20 Signature

21 STEVE WRIGHT
22 Print Name

23 Environmental Manager
24 Title

6.10.2015
Date

CALBAG RESOURCES LLC

25 
26 JIM PERRIS, Senior Vice President

June 9, 2015
Date